

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

WILLIAM TERRY DAVIS

PETITIONER

VS.

CIVIL ACTION NO. 5:09CV109-DCB-MTP

MARGARET BINGHAM

RESPONDENT

JUDGMENT

This matter having come on to be heard on this date upon the Report and Recommendation of the United States Magistrate Judge entered in this cause, and the Court, after a full review of the record, having adopted said Report and Recommendation as the finding of this Court by Order dated this day, finds that Respondent's Motion to Dismiss for Failure to Exhaust [5] should be granted and that Petitioner's Petition for a Writ of Habeas Corpus [1] should be dismissed without prejudice to his right to timely re-file the Petition, upon exhaustion of his state court remedies.

Pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253©, the Court further finds that the petitioner has failed to show (1) that reasonable jurists would find this Court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and

“debatable whether [this Court] was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000).¹ The Court therefore denies a certificate of appealability.

IT IS, THEREFORE, ORDERED AND ADJUDGED that Respondent's Motion to Dismiss for Failure to Exhaust [5] is granted and that Petitioner's Petition for a Writ of Habeas Corpus [1] is dismissed without prejudice to his right to timely re-file the Petition, upon exhaustion of his state court remedies. Petitioner is advised that this recommendation in no way

¹ Rule 11 of the Rules Governing §§ 2254 and 2255 Cases, as amended effective on December 1, 2009, reads as follows:

(a) Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) Time to Appeal. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

extends the applicable statute of limitations for the filing of a habeas petition, and the court is not expressing an opinion on the merits of any relief Petitioner may seek in such a petition.

FURTHER ORDERED AND ADJUDGED that a certificate of appealability is DENIED.

SO ORDERED this the 6th day of January, 2010.

s/David Bramlette

UNITED STATES DISTRICT JUDGE